

SIGNAL

2 to 10

FILED
HARRISBURG, PA

APR 16 2003

MARY E. D'ANDREA, CLERK
Per Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

**JOHN D. PERKEY and,
THERESA M. PERKEY,
Plaintiffs**

V.

Civil Action No. 1:CV-00-1639
(Judge Andrew Smyser)

**RELIABLE CARRIERS, INC.,
DANIEL JOSEPH BEMBEN and
KENT,**

Defendants

MOTION OF ABF FREIGHT SYSTEMS, INC., TO INTERVENE

NOW COMES, ABF Freight Systems, Inc., as self-insured and subrogee,
by its attorney, Michael A. Farrell, Esquire, Farrell & Ricci, P.C., and represents
unto this Honorable Court as follows:

1. On September 15, 1998, Plaintiff, John D. Perkey, sustained an accidental injury complained of in the Complaint filed on September 14, 2000. At the time of the accident, Plaintiff was an employee of ABF Freight Systems, Inc., and said accidental injury arose out of and in the course of Employee's

employment and at the same time, ABF Freight Systems, Inc., was self-insured for workmen's compensation benefits for its employees.

2. On September 15, 1998, Plaintiff and ABF Freight Systems, Inc. were bound by and operating under the Workmen's Compensation Act of the Commonwealth of Pennsylvania.
3. Subsequently, pursuant to the Provisions of the Workmen's Compensation Act of the Commonwealth of Pennsylvania, ABF Freight Systems, Inc., paid the sum of \$127,046.00 in Temporary Total Disability, benefits to the plaintiff, John D. Perkey, and \$52,685.58 for necessary medical expenses to treat his work-related injuries.
4. Under, and by virtue of the Provisions of said Workmen's' Compensation Act of Pennsylvania, and pursuant to case law of the Commonwealth of Pennsylvania, ABF Freight Systems, Inc., is therefore entitled to reimbursement in the sum of \$179,731.58, plus any further sum which it may be required to be paid to Plaintiff by Order of the Department of Labor and Industry, or by settlement or otherwise, from any sum or monies paid to, or on behalf of the said Plaintiff by way of Satisfaction of Judgement, Compromise Settlement or otherwise of the above-captioned lawsuit. See 77 P.S. §671; Winfree v. Philadelphia Electric Co., 554 A.2d 485 (Pa. 1989).

5. ABF Freight Systems, Inc., is entitled to join in this action to protect its subrogation interests and to have all Orders of Court made for its protection. Pursuant to Federal R.C.P. 24(b) and 24 (c), as a self-insurer of workers' compensation benefits.
6. ABF Freight Systems, Inc., is not precluded from asserting its subrogation rights as Intervenor. (See M.C.L. 500.106, (definition of "insurer" as pursuant to Michigan Property and Casualty Guaranty Association Act¹)).

¹ The Michigan Guaranty Association has assumed the obligation of Reliance Insurance Company, which was the insurer for Reliable Carriers, Inc., and is now in bankruptcy.

CERTIFICATE OF SERVICE

I, Michael A. Farrell, Esquire, do hereby certify that I served a true and correct copy of a *Motion of ABF Freight Systems, Inc., to Intervene* on this 14th day of April, 2003, by depositing it in the United States mail, postage prepaid and addressed as follows:

**United States District Court
Middle District of Pennsylvania
Federal Building
228 Walnut Street
Harrisburg, PA 17108**

**Marcus A. McKnight, III, Esquire
Irwin, McKnight & Hughes
60 West Pomfret Street
Carlisle, PA 17013
(Attorney for Plaintiffs)**

**Edward E. Knauss, IV, Esquire
E. Ralph Godfrey, Esquire
Metzger, Wickersham, Knauss & Erb, P.C.
3211 North Front Street
Harrisburg, PA 17110
(Attorneys for Reliable Carriers and Daniel Bemben)**

By: Michael A. Farrell
Michael A. Farrell, Esquire

Date: 04/14/03

WHEREFORE, ABF Freight Systems, Inc., as Subrogee, by Michael A. Farrell, Esquire, its attorney, moves and petitions this Honorable Court to allow its intervention in this action to protect its subrogation lien, and to have all Orders entered for its protection.

FARRELL & RICCI, P.C.

By: Michael A. Farrell
Michael A. Farrell, Esquire
Attorney ID No. 41067
4423 North Front Street
Harrisburg, PA 17110
717-230-9201
(Attorney for Intervenor, ABF Freight
Systems, Inc.)

Date: April 14, 2003